

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC HATCHETT,

Defendant-Appellant.

UNPUBLISHED
November 9, 2004

No. 249195
Wayne Circuit Court
LC No. 03-000526-01

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to two to ten years in prison for the assault with intent to do great bodily harm less than murder conviction and two years' consecutive imprisonment for the felony-firearm conviction. He appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant claims that there was insufficient evidence for the jury to find beyond a reasonable doubt that defendant did not act in self-defense. We disagree.

When reviewing a claim that the evidence was insufficient to support defendant's conviction, this Court reviews the evidence presented in a light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

"Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt." *People v Truong*, 218 Mich App 325, 337; 553 NW2d 692 (1996). Since the defendant brought forth a case of self-defense in this case, the burden rests with the prosecution to show beyond a reasonable doubt that defendant did not act in self-defense.

If the defendant honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm and that it is necessary for him to exercise deadly force, then his actions will be justified by self-defense. *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002).

Defendant had beaten up Crystal and could reasonably conclude that her brother, Anthony, would be mad about this. Defendant testified that Anthony was known for carrying a gun. When defendant's car stopped, Anthony got out of his car and ran toward defendant. Anthony was wearing baggy jeans and a big black coat, and defendant claims that Anthony was reaching to his side as he approached. Therefore, an argument could be made that defendant "honestly" believed that his life was in imminent danger or that he was about to receive serious bodily harm. However, since defendant never saw Anthony with a gun, Anthony never attacked defendant, and defendant fired the gun three more times after Anthony began to run away, we conclude that defendant did not have a "reasonable" belief that his life was in imminent danger or that he was about to receive serious bodily harm.

Furthermore, a reasonable jury could conclude beyond a reasonable doubt that it was not "necessary" for defendant to use deadly force. "The necessity element of self-defense normally requires that the actor try to avoid the use of deadly force if he can safely and reasonably do so, for example by applying nondeadly force or by utilizing an obvious and safe avenue of retreat." *Riddle, supra* at 119. There are two instances when one is not required to retreat: 1) when a defendant is in his own dwelling, and 2) when it is uncontested that the defendant is the victim of a sudden and violent attack. *Id.* at 119-120. The reason behind the second instance is that if you are under a sudden and violent attack you no longer have the ability to retreat.

Here, defendant was in a car that actually went out of its way to stop next to Anthony's car. Defendant did not ask Chilly (the driver) to keep driving or to drive off once Anthony got out of his car. Instead, defendant had Chilly grab his gun from under the seat and hand it to him. Defendant then proceeded to get out of the car and started shooting at Anthony, even though Anthony had not attacked him and he never saw Anthony with a gun. After Anthony ran away, defendant took a couple of steps forward and fired the gun three more times in Anthony's direction.

From this evidence, a reasonable jury could conclude that defendant was not the victim of a sudden and violent attack. Therefore, defendant was required to retreat, which he could have easily done by just driving away or not stopping in the first place. Since defendant was required to retreat and could have retreated, his actions fall short of meeting the necessity prong required for a valid defense of self-defense. "If it is possible to safely avoid an attack then it is not *necessary*, and therefore not permissible, to exercise deadly force against the attacker." *Riddle, supra* at 129 (emphasis in original). Because defendant had the means and opportunity to retreat but did not and was not required to use deadly force to repel the attack, the prosecution presented sufficient evidence to prove defendant was not acting in self-defense.

When the evidence is viewed in a light most favorable to the prosecution, a rational jury could have found beyond a reasonable doubt that defendant did not act in self-defense, and thus, his convictions for assault with intent to do great bodily harm less than murder and felony-firearm are affirmed.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Michael R. Smolenski